

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Modesto, California

**May 19, 2020 at 10:30 a.m.**

**ALL APPEARANCES MUST BE TELEPHONIC**  
(Please see the court's website for instructions.)

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**INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS**

**1. Matters resolved without oral argument:**

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Lindsey Peratis, the Courtroom Deputy, at (916) 930-4473 at least one hour prior to the scheduled hearing.

- 2. The court will not continue any short cause evidentiary hearings scheduled below.**
- 3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.**
- 4. If no disposition is set forth below, the matter will be heard as scheduled.**

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1. [19-90801](#)-B-13 ALEXANDER/CECILIA SUAREZ MOTION TO CONFIRM PLAN  
[MSN](#)-1 3-26-20 [[41](#)]

**Final ruling:**

The hearing on this motion is continued to June 16, 2020 at 10:30 a.m. to be heard with the debtors' Motion for Allowance and Allocation of Attorney Fees. No appearance is necessary on May 19, 2020.

2. [15-90609](#)-B-13 KIMBERLY MIRANDA MOTION TO MODIFY PLAN  
[JAD](#)-2 4-14-20 [[57](#)]

3. [19-91019](#)-B-13 ANTHONY GODINEZ MOTION TO CONFIRM PLAN  
[BSH](#)-5 3-20-20 [[65](#)]

**Final ruling:**

The motion will be denied as moot. The debtor filed an amended plan on May 14, 2020, making this motion moot. As a result the court will deny the motion without prejudice by minute order. No appearance is necessary.

4. [19-91121](#)-B-13 DIANE VARGAS MOTION TO CONFIRM PLAN  
[BSH](#)-1 3-22-20 [[25](#)]

5. [17-90823](#)-B-13 JOSEPH/LISA ROBERTSON MOTION TO MODIFY PLAN  
[PLG](#)-10 4-13-20 [[129](#)]

6. [19-90533](#)-B-13 MARITESS PRADO AMENDED MOTION TO CONFIRM PLAN  
[FAT](#)-2 3-23-20 [[53](#)]

**Final ruling:**

The relief requested in the motion is supported by the record, the trustee having withdrawn his opposition, and no other timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

7. [20-90134](#)-B-13 KENDALL/CYNTHIA MILLER MOTION TO VALUE COLLATERAL OF  
[BSH](#)-2 GOLDEN 1 CREDIT UNION  
4-22-20 [[27](#)]

**Final ruling:**

The motion is denied without prejudice. The creditor, Golden 1 Credit Union, was not served through its agent for service of process as required by FRBP 7004(a)(3). As a result of this service defect the court will deny the motion by minute order. No appearance is necessary.

8. [19-90339](#)-B-13 LINDA EMERSON MOTION TO CONFIRM PLAN  
[BSH](#)-2 3-17-20 [[49](#)]

9. [19-91044](#)-B-13 HAWEL/LILLIAN HAWEL MOTION TO DISMISS CASE  
[AJC](#)-2 4-11-20 [[38](#)]

**Tentative ruling:**

On April 11, 2020, creditor Skiptrace Judgment Recovery (the "Creditor") filed this Motion to Dismiss (the "Motion") seeking dismissal of the case filed by debtors Hawel A. Hawel and Lillian Hawel (the "Debtors"). Dckt. 38.

The Motion primarily argues dismissal is proper pursuant to 11 U.S.C. § 1307(c) because the case was filed in bad faith for the sole purpose of wrongfully interfering with the Creditor's collection attempts. The Creditor also argues the Debtors' schedules were filed after the deadline, and that, coupled with the Debtors' failure to serve their Chapter 13 plan and set a confirmation hearing until

several months into the case constitutes unreasonable delay that is prejudicial to creditors.

The Debtors timely filed an opposition on May 19, 2020. Dckt. 55. The nub of the Debtors' objection is that they dispute the Creditor's claim alleging: (1) that the Creditor's claim was discharged pursuant to 11 U.S.C. § 1328 in a prior case, no. 12-92756; and (2) that the Creditor violated the automatic stay in the prior case by renewing its judgment (hereinafter the "Claims").

As discussed below, based on the totality of the circumstances, the court agrees that the Debtors did not file this case in good faith. In addition, the court finds that the Debtors have been dilatory in the administration of their case and this has resulted in unreasonable delay that is prejudicial to creditors. As a result the court finds dismissal is appropriate.

This Chapter 13 case is clearly a two party dispute between the Debtors and Creditor regarding the Claims that arose under the Debtors' prior Chapter 13 case, case no. 12-92756. As such, the prior case is the appropriate case in which to resolve and litigate the Claims. The present case was only filed as an expedient way to invoke the automatic stay. Although this procedure may be convenient and expedient for the Debtors, it does not equate to good faith and thus warrants dismissal on that basis alone.

Further, the court finds that the Debtors were intentionally dilatory in prosecuting their case and in seeking confirmation of their Chapter 13 plan. The Debtors' first plan was not filed until a month into the case on December 15, 2019, and the Debtors failed to set it for a confirmation hearing as required by L.B.R. 3015(1)(c). As a result, the case sat idle until the Creditor filed its Objection to Confirmation of Plan and Motion to Dismiss on January 30, 2020. Dckt. 18. That plan was clearly not confirmable as it failed to deal with the Creditor's claim, the only real claim in the case, in any meaningful way.

After the court denied confirmation of the Debtors' first proposed Chapter 13 Plan, the Debtors proposed a First Amended Plan with significantly increased payments (from \$200 for 36 months in the original plan to \$200 for 12 months and \$1,350.00 for 48 months in the First Amended Chapter 13 Plan). Dckts. 15, 51. The Debtors do not explain why they (roughly 6 months from now) anticipate receiving extra income of \$1,150.00 a month above and beyond their present income and reasonable, necessary expenses. Since the Debtors provided no evidence as to that income increase, the First Amended Plan on its face is not feasible and not confirmable. 11 U.S.C. § 1325(a)(6). The Debtors' lack of timely administration of their case resulted in unreasonable delay that is prejudicial to the Creditor and warrants dismissal.

Based on the foregoing and the totality of the circumstances, the court finds grounds for dismissal. Specifically: (1) that the case involves a two party dispute over the Claims and this dispute should be resolved in the prior Chapter 13 case. Using this case solely as a convenient way to invoke the automatic stay is bad faith; and (2) the Debtors' failure to timely file, serve, and set for hearing their initial Chapter 13 Plan, which provided no meaningful treatment to the only creditor in the case, results in unreasonable delay that is prejudicial to Creditor; thus, dismissal is appropriate. The Motion is granted, and the case is dismissed.

10. [20-90146](#)-B-13 CHARLES/DAWN ROBINSON  
[AP-1](#) OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK NATIONAL  
ASSOCIATION  
4-14-20 [[22](#)]

11. [19-90755](#)-B-13 MICHAEL LAVELLE AND  
[MMS-6](#) KIMBERLY ANGEL OBJECTION TO CLAIM OF GULF  
HARBOUR INVESTMENTS  
CORPORATION, CLAIM NUMBER 23  
4-13-20 [[87](#)]

**Final ruling:**

The objection to claim is overruled without prejudice. Moving party noticed the hearing on this objection to claim under LBR 3007-1(b)(1). As this LBR requires 44 days notice and only 36 days notice was given, service is defective. As a result of this service defect the court will overrule the objection by minute order. No appearance is necessary.

12. [20-90163](#)-B-13 MARCELO AGUILAR  
[RDG-1](#) OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
4-16-20 [[19](#)]

**Final ruling:**

The debtor has filed a statement of non-opposition to this objection. As such, the court will sustain the objection by minute order. No appearance is necessary.

13. [19-91070](#)-B-13 RICHARD/HEATHER PETERS  
[JCK-4](#) MOTION TO CONFIRM PLAN  
3-26-20 [[51](#)]

14. [20-90187](#)-B-13 JENENE DEBOW  
[MC-1](#)

MOTION TO VALUE COLLATERAL OF  
SANTANDER CONSUMER USA INC.  
4-28-20 [[14](#)]

15. [19-90889](#)-B-13 RAMIRO SALGADO  
[BSH-1](#)

MOTION TO CONFIRM PLAN  
3-17-20 [[56](#)]

16. [19-90292](#)-B-13 JACK/KAREN MEYERS  
[PLG-1](#)

MOTION TO MODIFY PLAN  
4-3-20 [[21](#)]

**Final ruling:**

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

17. [20-90093](#)-B-13 ADAN DELGADO  
[RDG-1](#)

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
4-20-20 [[25](#)]

18. [20-90096](#)-B-13 ANTHONY AVILA  
[JCW](#)-1

OBJECTION TO CONFIRMATION OF  
PLAN BY DEUTSCHE BANK NATIONAL  
TRUST COMPANY  
4-9-20 [[35](#)]

**Final ruling:**

**This case was dismissed on April 23, 2020. As a result the objection will be overruled without prejudice by minute order as moot. No appearance is necessary.**

19. [20-90096](#)-B-13 ANTHONY AVILA  
[RDG](#)-1

OBJECTION TO CONFIRMATION OF  
PLAN BY RUSSELL D. GREER  
4-21-20 [[45](#)]

**Final ruling:**

**This case was dismissed on April 23, 2020. As a result the objection will be overruled without prejudice by minute order as moot. No appearance is necessary.**

20. [20-90096](#)-B-13 ANTHONY AVILA  
[VVF](#)-1

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
4-21-20 [[39](#)]

MECHANICS BANK, INC. VS.

**Final ruling:**

**This case was dismissed on April 23, 2020. As a result the motion will be denied without prejudice by minute order as moot. No appearance is necessary.**